

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, January 4, 2022

Hearing Room 1675

11:00 AM

2:00-00000

Chapter

#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

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Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

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<https://www.cacb.uscourts.gov/judges/honorable-robert-n-kwan> under the "Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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2:16-15322 Curtis C. Magleby

Chapter 11

#1.00 Status conference re: Disclosure statement
fr. 5/19/21, 9/15/21, 12/8/21

Docket 174

Tentative Ruling:

Updated tentative ruling as of 1/3/22. No tentative ruling on the merits. Appearances are required on 1/4/22, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 12/7/21. No tentative ruling on the merits. Regarding debtor's "expedited" motion to limit notice, the court will not rule on the motion as it is not properly noticed pursuant to LBR 9013-1 or 9075-1. However, the court is willing to briefly discuss the concerns raised by the motion and the opposition thereto. However, the court does not see how it can waive the express statutory requirement of a disclosure statement under 11 U.S.C. 1125(b) in a non-small business debtor, non-subchapter V Chapter 11 bankruptcy case as this one. If cost of preparing a disclosure statement is a concern, debtor might consider utilizing the court's optional form disclosure statement for individual debtors, Form F2081-1.DISCLSR.STMT. The court, however, does not opine whether such form would be appropriate or approved in this case. Appearances are required on 12/8/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 9/14/21. The court notes that the extended claims bar date of 8/31/21 has passed, and on 9/13/21, the United States Trustee filed another motion to dismiss or convert set for hearing on 10/27/21 based on procedural and substantive grounds, primarily for delay in confirming a plan. It appears to the court that since the case has been pending for over 5 years, debtor should be in a position to file a disclosure statement and proposed plan as progress has been made resolving disputes with creditors, such as with the former spouse in the marital dissolution action in state court, even if not all other disputes regarding claims have been resolved.

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Chapter 11

Appearances are required on 5/19/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 5/12/21. No tentative ruling on the merits.
Appearances are required on 5/19/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Curtis C. Magleby

Represented By
Illyssa I Fogel

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2:18-10524 Fox Property Holdings, LLC

Chapter 11

#2.00 Cont'd status conference re: Management of chapter 11 case
fr. 10/20/21, 11/17/21, 12/14/21

Docket 1

Tentative Ruling:

No tentative ruling as of 1/3/22. Appearances are required on 1/4/22, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Fox Property Holdings, LLC

Represented By
Timothy J Yoo

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2:20-13855 Archie M. Hoggan

Chapter 7

Adv#: 2:21-01198 Hoggan v. NAVIENT SOLUTIONS INC

#3.00 Status conference re: Complaint for discharge of student loans under 11 U.S.C. Section 523(a)(8) in full fr. 11/30/21

Docket 1

Tentative Ruling:

The court has reviewed the parties' joint status report and proposes the following pretrial schedule: (1) deadline to file motions to join other parties or to amend the pleadings: 2/1/22; (2) discovery cutoff date: 4/30/22; (3) deadline to file dispositive pretrial motions: 5/31/22; and (4) post-discovery status conference: 5/10/22 at 1:30 p.m. The court will discuss with the parties whether the matter should be referred to mediation. Plaintiff to lodge a proposed scheduling order within 7 days after the status conference. Appearances are required on 1/4/22, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Archie M. Hoggan

Represented By
Christine A Kingston
Michael J Riela

Defendant(s):

NAVIENT SOLUTIONS INC

Pro Se

Plaintiff(s):

Archie M Hoggan

Represented By
Michael J Riela

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Chapter 7

Trustee(s):

John P Pringle (TR)

Pro Se

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2:20-15742 Sara Victoria

Chapter 7

Adv#: 2:20-01632 Adam, DC et al v. Victoria

#4.00 Cont'd status conference re: Complaint for determination of nondischargeability of debt pursuant to 11 U.S.C. §§523(a)(2)(A), 523(a)(4), and 523(a)(6) fr. 12/1/20, 6/15/21

Docket 1

Tentative Ruling:

Updated tentative ruling as of 1/3/22. The court has reviewed defendant's unilateral status report filed on 12/28/21, noting that the discovery cutoff date as extended to 11/30/21 has passed. A pretrial conference has not yet been set. Plaintiffs had demanded a jury trial, but as noted in a prior tentative ruling, there is no right to jury trial on the debt dischargeability claims under 11 U.S.C. 523, though there may be a partial right to jury trial as to the unliquidated fraud tort claims against defendant under state or common law. The parties have indicated their consent to bankruptcy court jurisdiction to enter a final judgment, but with the outstanding partial jury demand, plaintiffs should indicate whether they still demand a jury trial on their jury triable claims. If so, the court and the parties should discuss whether such a right to jury trial exists, suggested by the case of *In re Hashemi*, 104 F.3d 1122, 1125 and n. 1 (9th Cir. 1994). If plaintiffs insist on their jury trial demand and there is a right to jury trial, the court is inclined to permissively abstain and grant stay relief to allow plaintiffs to try their tort claims before a state court jury and stay the adversary proceeding until judgment is entered on the state court tort claims. 28 U.S.C. 1334(c)(1); *In re Tucson Estates, Inc.*, 912 F.2d 1162 (9th Cir. 1990). Appearances are required on 1/4/22, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling. The court notes that in the adversary complaint plaintiffs demanded a jury trial, but there is no jury trial right for the claims under 11 U.S.C. 523(a)(2), (4) and (6) in this adversary proceeding since the debt dischargeability claims are equitable in nature. *In re Hashemi*, 104 F.3d 1122, 1124-1125 and n. 1 (9th Cir. 1997). The court also notes that the underlying alleged debts have not been liquidated yet, though plaintiffs have a pending

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Chapter 7

action in state court, asserting state law tort claims against defendant, which action is now stayed due to the automatic stay arising from this bankruptcy case. Although the determination of claims, whether the alleged debts of defendant are dischargeable, is equitable, the determination of the existence of the alleged debts may be legal in nature since the alleged debts would arise in tort under state law, and it is an open question on that issue, and there may be a right to a jury trial. *Id.* at 1125 and n. 1. The issue of whether a partial right to jury trial exists here would have to be briefed. If there is a right to jury trial in part in this case, this bankruptcy court can hold a civil jury trial with the consent of the parties, or the parties could waive jury trial if there is such a right. Alternatively, the court could permissively abstain under 28 U.S.C. 1334(c)(1) and grant stay relief to allow the state court to determine the alleged debts under state law with or without the assistance of a civil jury, and stay this adversary proceeding until the state court determines the underlying debts, and then determine debt dischargeability afterwards. See *In re Oroojian*, Adv. No. 2:20-ap-01020 RK, 2020 WL 2201939 (Bankr. C.D. Cal., May 5, 2020); see also, *In re Eber*, 687 F.3d 1123, 1128 and n. 5 (9th Cir. 2012) (bankruptcy court has exclusive jurisdiction over debt dischargeability claims under 11 U.S.C. 523(a)(2), (4) and (6), citing 11 U.S.C. 523(c)).

Assuming that the court adopts its tentative ruling on defendant's motion to dismiss also on calendar on 12/1/20 and denies the motion, and the court does not abstain from determining the merits of the underlying alleged debts as discussed above, set a discovery cutoff date of 5/31/20 and a postdiscovery status conference on 6/15/21 at 1:30 p.m. with a joint status report due on 6/8/21. Plaintiffs to lodge a proposed scheduling order within 7 days of hearing.

Appearances are required on 12/1/20, but counsel and self-represented parties must appear by telephone. With the consent of the parties, the court can advance the hearing on defendant's motion to dismiss on the 2:30 p.m. hearing calendar to be conducted with the status conference.

Party Information

Debtor(s):

Sara Victoria

Represented By

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Chapter 7

Freddie V Vega

Defendant(s):

Sara Victoria

Pro Se

Plaintiff(s):

Scott Adam, DC

Represented By
Aisha Shelton Adam
Kerry A. Moynihan

Adam Chiropractic and Wellness

Represented By
Aisha Shelton Adam
Kerry A. Moynihan

Trustee(s):

Peter J Mastan (TR)

Pro Se

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2:20-18515 Fereidoun Chaparli

Chapter 7

Adv#: 2:20-01687 Roozafzai et al v. Chaparli et al

#5.00 Cont'd status conference re: Complaint to determine non-dischargeability of debts/claims
[11 U.S.C. §§523(a)(2), 523(a)(4), and 523(a)(6)]
fr. 9/14/21, 10/26/21, 11/30/21

Docket 1

***** VACATED *** REASON: Another summons issued, s/c reset to 2/8/22
at 1:30 p.m.-pp.**

Tentative Ruling:

Updated tentative ruling as of 1/3/22. Off calendar. The status conference is reset to 2/8/22 at 1:30 p.m. based on issuance of a new summons. No appearances are required on 1/4/22.

Prior tentative ruling as of 11/29/21 at 1:00 p.m. The court has reviewed plaintiffs' request for entry of default, which must be denied because the summons and complaint were not timely served under FRBP 7004(e). This rule requires that the summons and complaint must be served within seven days after the summons is issued. If service is by mail, the summons and complaint must be deposited in the U.S. mail within the seven-day period. Otherwise, the summons expires and a new summons must be obtained from the court and timely served. In this case, the court issued the summons on 12/17/20, but the amended proof of service shows that the summons and complaint were served on 12/28/20, and not within the seven-day period after issuance, which expired on 12/24/20. Plaintiffs must obtain a new summons and serve defendant within seven days of issuance of the new summons. Plaintiffs must promptly serve defendant as FRBP 7004 incorporating FRCP 4(m) requires that the action be dismissed without prejudice unless the summons and complaint are served within 90 days of filing of the complaint unless excused for good cause.

The court will set a further status conference in 30 to 45 days for the court to monitor plaintiffs' re-service of defendant. Appearances are required on 11/30/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

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Chapter 7

Updated tentative ruling as of 10/21/21. No tentative ruling on the merits. Appearances are required on 10/26/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 9/13/21. The court notes that plaintiff filed an amended proof of service on 4/8/21 indicating service on defendant on 12/28/20. However, plaintiff has not filed a request for entry of default, nor has he filed a motion for default judgment. Plaintiff will need to proceed with default judgment proceedings or the court will set a pretrial and trial schedule. Appearances are required on 9/14/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 6/25/21. Plaintiff to address when he will file a request for entry of default based on lack of timely response to service of the summons and complaint. Appearances are required on 6/29/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling. The court has reviewed plaintiff's unilateral status report. Plaintiff to address when he will file a request for entry of default based on lack of timely response to service of the summons and complaint. Appearances are required on 3/30/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Fereidoun Chaparli

Represented By
John Asuncion

Defendant(s):

Fereidoun Chaparli

Pro Se

DOES 1-20

Pro Se

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Chapter 7

Plaintiff(s):

Hassan Roozafzai

Represented By
Shahrokh Mokhtarzadeh

Ghodsieh "Vida" Roozafzai

Represented By
Shahrokh Mokhtarzadeh

Trustee(s):

John P Pringle (TR)

Pro Se

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2:00 PM

2:14-22240 Shany Benmoshe

Chapter 7

Adv#: 2:20-01060 Ben-Moshe et al v. California State Board Of Equalization

#6.00 Pretrial conference re: Complaint for 1. declaratory relief; 2. Violation of discharge fr. 8/17/21, 9/14/21, 11/2/21

Docket 1

Tentative Ruling:

Updated tentative ruling as of 1/3/22. The court has reviewed the joint pretrial stipulation required by LBR 7016-1 for the pretrial conference, which is acceptable to the court. Appearances are required on 1/4/22 to discuss scheduling of the trial, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions. The court is amenable to plaintiff's request for scheduling half days to conduct the trial, and suggests that the trial be conducted in the afternoons from 1:30 to 4:30 p.m.

Prior tentative ruling as of 9/11/21. Since discovery has been taken and appears to be completed, and mediation was unsuccessful, the court intends to abide by the scheduling order of 8/18/21 requiring the parties to file a joint pretrial stipulation by 10/26/21 and setting a pretrial conference for 11/2/21 at 2:00 p.m. Having read counsel's declaration in response to the order to show cause, suggesting that the matter be stayed until debtor can file a new Chapter 7 bankruptcy case in October 2022 on the theory that the debt would be dischargeable in such a case, first, the suggestion is not made in a proper motion, and second, the court is of the view that such suggestion and theory are not well-taken. The tax debt if upheld would still be nondischargeable in a post-October 2022 case as in this case because it is a debt within the meaning of 11 U.S.C. 507(a)(8)(C) as a tax required to be collected or withheld and for which the debtor is liable in whatever capacity. The issue, it seems to the court, is that either he is liable as a responsible person or not. Appearances are required on 9/14/21 to discuss scheduling of further proceedings, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

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Shany Benmoshe

Chapter 7

Prior tentative ruling as of 8/16/21. The parties should report if they have completed mediation and discovery, and if the matter is not settled, when it should be set for a pretrial conference. Appearances are required on 8/17/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling. The court has reviewed the joint status report and notes that the parties do not agree as to dates for a schedule of pretrial proceedings and whether the matter should be ordered to mediation. No tentative ruling on the merits. Appearances are required on 6/9/20 to discuss scheduling and possible referral to mediation, but counsel and self-represented parties must appear by telephone.

Party Information

Debtor(s):

Shany Benmoshe

Represented By
Simon Aron
Barry E Cohen

Defendant(s):

California State Board Of

Pro Se

Plaintiff(s):

Shany Ben-Moshe

Represented By
Barry E Cohen

Shany Benmoshe

Represented By
Barry E Cohen

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:12-16195 David Alan Wilson

Chapter 7

Adv#: 2:12-01317 McKnew, Thomas I. IV et al v. Wilson

#7.00 Hearing re: Motion for temporary restraining order in support of enforcement of garnishment orders directed to American General Corporation Pursuant to California Code of Civil Procedure §§ 701.202, 706.154, 708.180, and 3439.07 made Applicable by Fed. R. Bankr. P. Rule 7069 and FED. R. CIV. P. Rule 69(a)(2)

Docket 609

Tentative Ruling:

No tentative ruling as of 1/3/22. Appearances are required on 1/4/22, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

David Alan Wilson

Represented By
Michael N Nicastro
Christina M Chan
Eryk R Escobar

Defendant(s):

David A Wilson

Represented By
Jon-Michael A Marconi
James Andrew Hinds Jr
David Samuel Shevitz
Christopher A Dias

Movant(s):

McKnew, Thomas I. IV

Represented By
James Andrew Hinds Jr
Paul R Shankman
Hye Jin Jang

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CONT... David Alan Wilson

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Brian Barouir Yeretzian
Rachel M Sposato

Plaintiff(s):

McKnew, Thomas I. IV

Represented By
James Andrew Hinds Jr
Paul R Shankman
Hye Jin Jang
Brian Barouir Yeretzian
Rachel M Sposato

Lisa A McKnew

Represented By
James Andrew Hinds Jr
Paul R Shankman
Hye Jin Jang
Brian Barouir Yeretzian
Rachel M Sposato

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Thomas H Casey

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2:18-10524 Fox Property Holdings, LLC

Chapter 11

#8.00 Hearing re: Motion To Withdraw As Counsel For The Debtor And Debtor In Possession
In The Bankruptcy Case And Adversary Case

Docket 295

Tentative Ruling:

No tentative ruling as of 1/3/22. Appearances are required on 1/4/22, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Fox Property Holdings, LLC

Represented By

Timothy J Yoo

Juliet Y. Oh

Levene, Neale, Bender, Yoo & Brill LLP